

FCC MAIL SECTION

~~Oct 14 10 42 AM '98~~ Federal Communications Commission DA 98-2034

DISPATCHED Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Rio Grande City, Texas))

MM Docket No. 98-186

RM-9318

NOTICE OF PROPOSED RULE MAKING

Adopted: September 30, 1998

Released: October 9, 1998

Comment Date: November 30, 1998

Reply Date: December 15, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Arturo Lopez and Eleazar Trevino ("Petitioners"), proposing the allotment of Channel 236A at Rio Grande City, Texas.¹ Petitioners indicated that they would file an application for Channel 236A at Rio Grande City if the channel is allotted to the community.

2. We believe the proposal warrants consideration because the proposed allotment would provide additional broadcast service to Rio Grande City.² A staff engineering analysis indicates

¹ Petitioners' request was verified by its technical consultant. We are unable to determine from the petition if petitioners' consultant is also a principal of the petitioners. Although a petitioner may seek assistance in the preparation of a pleading or petition for rule making, Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel, be signed and verified by the commenting or petitioning party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919, n.41 (1990). Petitioners are requested to rectify this omission in comments.

² According to the 1998 Rand McNally Commercial Atlas and Marketing Guide, Rio Grande City is incorporated with its own post office and zip code and the 1990 census credits the community with a population of 10,725 people.

that Channel 236A can be allotted to Rio Grande City consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 5.79 kilometers (3.6 miles) north of the community.³ Since Rio Grande City is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of that Government in the proposal.

3. In view of the fact that the proposed allotment could provide additional broadcast service to Rio Grande City, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 236A to Rio Grande City, Texas. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Rio Grande City, as follows:

Community	Channel No.	
	Present	Proposed
Rio Grande City, Texas	298C2 ⁴	236A, 298C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 30, 1998**, and reply comments on or before **December 15, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioners' consultant, as follows:

Lyndon H. Willoughby
Willoughby & Voss
P. O. Box 701190
San Antonio, Texas 78270-1190

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the

³ The coordinates for Channel 236A at Rio Grande City, Texas, are 26-25-47 and 98-49-25.

⁴ Action in MM Docket No. 95-74 substituted Channel 298C2 for Channel 276A at Rio Grande City, Texas, and modified the license for Station KCTM accordingly. See 13 FCC Rcd 2096 (1998).

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.